

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DUNCAN J. McNEIL, III,

Plaintiff,

vs.

UNITED STATES AND ITS OFFICERS  
AND AGENCIES, et al.,

Defendants.

No. CV-05-249-AAM

**ORDER OF DISMISSAL**

This action was transferred here from the District of Hawaii because of improper venue. 28 U.S.C. §1406(a). It is one of many actions the plaintiff has filed in various districts of this nation in an attempt to circumvent pre-filing review orders entered by the undersigned and now an order which prohibits plaintiff from filing anything in the Eastern District of Washington unless accompanied by the appropriate filing fee.

As recited by the “Order of Transfer” from the District of Hawaii (Ct. Rec. 11), plaintiff filed his original complaint in that district on July 11, 2005. On July 15, the District of Hawaii entered an order denying plaintiff’s in forma pauperis (IFP) application and dismissed his complaint and action pursuant to 28 U.S.C. §1915(g) (Ct. Rec. 4). The court noted that at least five of plaintiff’s previous federal actions had been dismissed as frivolous and for failure to state a claim. The court also noted that plaintiff “did not submit a filing fee with his Complaint, did not claim that he was in imminent danger of serious physical injury, and had submitted an

1 incomplete in forma pauperis application . . . .”

2 Plaintiff then filed a number of documents with the District of Hawaii, including a “First  
3 Amended Verified Complaint.” (Ct. Rec. 8). In an obvious attempt to get the District of Hawaii  
4 to reconsider its earlier dismissal, plaintiff’s amended complaint alleges he is in imminent danger  
5 or serious physical injury. While that did not persuade the District of Hawaii to grant the plaintiff  
6 IFP status, it did prompt it to transfer the action here. According to the Hawaii court: “McNeil  
7 does allege a conditions of confinement claim against officials at the Spokane County Jail.  
8 Moreover, he now alleges that he is being denied medical care, and has provided documentation,  
9 which could support a finding of imminent danger of serious physical injury.”

10 The District of Hawaii’s transfer order was filed on August 5. On August 9, this court  
11 entered an order in CV-05-211-AAM (Ct. Rec. 8) barring the plaintiff from filing any further  
12 actions in the Eastern District of Washington without payment of the appropriate filing fee. This  
13 was prompted by plaintiff’s filing of numerous actions in other districts nationwide in an attempt  
14 to circumvent pre-filing review orders issued by this court (review proposed complaint and  
15 determine if it was frivolous; if not frivolous, the plaintiff would be granted IFP status).  
16 Plaintiff’s allegation that he is under imminent danger of serious physical injury does not  
17 persuade the court to make an exception to the August 9 order requiring payment of the filing fee.  
18 In a bid to gain IFP status and to gain additional review of allegations regarding foreign  
19 judgments and writs already found frivolous by this court, what the plaintiff has done in this  
20 action, and in other actions filed in districts other than the Eastern District of Washington, is  
21 include a conditions of confinement allegation. Proof enough of this is the allegation in the First  
22 Amended Verified Complaint (Paragraph 1.05) that: “Plaintiff is presently under imminent danger  
23 of serious physical injury, resulting directly from the defendant’s acts of retaliation and  
24 retribution, as a result of and taken to interfere with the plaintiff’s lawful acts of execution and  
25 enforcement of judgments.” Furthermore, plaintiff’s proposed amended complaint does not  
26 name/identify Spokane County or any Spokane County Jail officials as defendants. The plaintiff  
27 simply wanted the District of Hawaii to reconsider his frivolous allegations regarding foreign  
28 judgments and writs, notwithstanding the fact it was obvious that Hawaii has absolutely nothing

1 to do with any of the plaintiff's claims.

2 Were this any other pro se prisoner plaintiff, this court might consider providing an  
3 opportunity to submit an amended complaint alleging only a conditions of confinement claim and  
4 if sufficient, grant IFP status. This, however, is not any other pro se prisoner plaintiff. Plaintiff's  
5 track record of abusing the court system is a lengthy one and clearly established. Accordingly, if  
6 plaintiff wants to assert a conditions of confinement claim, he will need to include that claim (and  
7 that claim only) in a complaint accompanied by the \$250 filing fee.

8 Plaintiff will not be allowed to proceed IFP in the captioned matter. The First Amended  
9 Verified Complaint and this action are **DISMISSED with prejudice**. Plaintiff will not be  
10 allowed to file anything further in the captioned matter with the exception of a "Notice of  
11 Appeal" to the Ninth Circuit Court of Appeals. **This court certifies that any such appeal taken**  
12 **is not taken in good faith.** 28 U.S.C. §1915(a)(3) and Fed. R. App. P. 24(a)(3)(A).

13 **IT IS SO ORDERED.** The District Executive shall enter judgment accordingly and  
14 forward a copy of the judgment and this order to plaintiff McNeil.

15 **DATED** this 19<sup>th</sup> of September, 2005.

16  
17 s/ Alan A. McDonald  
18 ALAN A. McDONALD  
19 Senior United States District Judge  
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